

HEIRS OF CHARLES E. FRANK ET AL.

IBLA 75-309, 363

Decided August 11, 1975

Appeals from decisions of the Fairbanks District Office, Bureau of Land Management, rejecting Native allotment applications listed in Appendix.

Affirmed.

1. Alaska: Native Allotments -- Withdrawals and Reservations: Power Sites

An Alaska Native allotment application is properly rejected where applicant fails to show five years substantial continuous use and occupancy prior to the closing of the land to native allotments. An allotment application is properly rejected when the land applied for is within a power site withdrawal and initiation of use and occupancy was less than five years prior to the time the lands were closed.

APPEARANCES: E. John Athens, Jr., Esq., Alaska Legal Services Corporation, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

In each case listed in the Appendix, appellant filed a native allotment application, pursuant to 43 U.S.C. § 270-1 to § 270-3 (1970), in which recitation was made that use and occupancy had been initiated after January 9, 1958. Each appellant, of course, indicated continuous use on a seasonal basis from time of initiation of occupancy to time of filing of the application. The Fairbanks District Office, Bureau of Land Management, rejected the several applications because of the

failure of any of the parties to demonstrate substantially continuous use and occupancy for the five year period immediately preceding the withdrawal of the land; the withdrawal was effected by an application therefor, for power site purposes filed by the Geological Survey on January 9, 1963. The application was formalized and finalized by Public Land Order 3520 of January 5, 1965, announcing the Power Site Classification No. 445 for the Rampart Power Project.

[1] All arguments advanced upon appeal were fully considered and answered in Herman Joseph, 21 IBLA 199 (1975). The Board in that case, held that an applicant has failed to demonstrate five years continuous use and occupancy where use and occupancy was initiated within the five year period immediately preceding the date that the Geological Survey filed its application for withdrawal for power site purposes, 43 CFR 2351.3, and where the application was finalized on January 5, 1965, by a final order of withdrawal. The Board adheres to the decision in Joseph, and for the reasons stated therein finds that the decisions below must be affirmed.

Therefore, pursuant to the authority delegated by the Secretary of the Interior to the Board of Land Appeals, 43 CFR 4.1, the decisions below are affirmed.

Frederick Fishman  
Administrative Judge

We concur:

Edward W. Stuebing  
Administrative Judge

Douglas E. Henriques  
Administrative Judge

APPENDIX

|             |        |                           |
|-------------|--------|---------------------------|
| IBLA 75-309 | F13811 | Heirs of Charles E. Frank |
| IBLA 75-363 | F12768 | James Nathaniel           |
|             | F13815 | Bertha Roberts            |
|             | F14652 | Mary N. VanHatten         |
|             | F14713 | Joseph S. Carroll, Jr.    |
|             | F14714 | Everett Englishoe         |
|             | F14998 | Chester Druck             |
|             | F14999 | Lois Druck                |
|             | F15002 | Lilly H. Henry            |
|             | F15505 | Earl John                 |
|             | F17136 | Allen A. James            |

